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IN THE

Supreme Court of the United States

October Term, 1965
No. 5, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

Decree Proposed by the State of California and Memorandum in Support of Proposed Decree.

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UNITED STATES OF AMERICA,

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STATE OF CALIFORNIA,

Defendant.

DECREE PROPOSED BY THE STATE OF CALIFORNIA.

The United States having moved for entry of a supplemental decree herein, and the matter having been referred to the late William H. Davis as Special Master to hold hearings and recommend answers to certain questions with respect thereto, and the Special Master having held such hearings and having submitted his report, and the issues having been modified by the supplemental complaint of the United States and the answer of the State of California thereto, and the parties having filed amended exceptions to the report of the Special Master, and the Court having received briefs and heard argument with respect thereto and having by its opinion of May 17, 1965, approved the recommendations of the Special Master, with modifications, it is Ordered, Adjudged and Decreed that the decree heretofore entered in this cause on October 27, 1947, 332 U.S.

804, be, and the same is hereby, modified to read as follows:

1. As against the State of California and all persons claiming under it, the subsoil and seabed of the continental shelf, more than three geographical miles seaward from the nearest point or points on the coast line, at all times pertinent hereto have appertained and now appertain to the United States and have been and now are subject to its exclusive jurisdiction, control and power of disposition. The State of California has no title thereto or property interest therein.

2. As used herein, "coast line" means—

(a) The line of mean lower low water on the mainland, on islands, and on low-tide elevations lying wholly or partly within three geographical miles from the line of mean lower low water on the mainland or on an island; and

(b) The line marking the seaward limit of inland waters.

The coast line is to be taken as heretofore or hereafter modified by natural or artificial means, and includes the outermost permanent harbor works that form an integral part of the harbor system within the meaning of Article 8 of the Convention on the Territorial Sea and the Contiguous Zone, T.I.A.S. No. 5639.

3. As used herein—

(a) "Island" means a naturally-formed area of land surrounded by water, which is above the level of mean high water;

(b) "Low-tide elevation" means a naturally-formed area of land surrounded by water at mean lower low water, which is above the level of mean lower low water but not above the level of mean high water;

(c) "Mean lower low water" means the average elevation of all the daily lower low tides occurring over a period of 18.6 years;

(d) "Mean high water" means the average elevation of all the high tides occurring over a period of 18.6 years;

(e) "Geographical mile" means a distance of 1852 meters (6076.10333 . . . U.S. Survey Feet or approximately 6076.11549 International Feet).

4. As used herein, "inland waters" means waters landward of the baseline of the territorial sea, which are now recognized as internal waters of the United States under the Convention on the Territorial Sea and the Contiguous Zone. The inland waters referred to in paragraph 2(b) hereof include—

(a) Any river or stream flowing directly into the sea, landward of a straight line across its mouth;

(b) Any port, landward of its outermost permanent harbor works and a straight line across its entrance;

(c) Any "historic bay", as that term is used in paragraph 6 of Article 7 of the Convention, defined essentially as a bay over which the United States has traditionally asserted and maintained dominion with the acquiescence of foreign nations;

(d) Any other bay (defined as a well-marked coastal indentation having such penetration, in proportion to the width of its entrance, as to contain landlocked waters, and having an area, including islands within the bay, at least as great as the area of a semicircle whose diameter equals the length of the closing line across the entrance of the bay, or the sum of such closing lines if the bay has more than one entrance), landward of a straight line across its entrance or, if the entrance is more than 24 geographical miles wide, landward of a straight line not over 24 geographical miles long, drawn within the bay so as to enclose the greatest possible amount of water. An estuary of a river is treated in the same way as a bay.

5. In drawing a closing line across the entrance of any body of inland water having pronounced headlands, the line shall be drawn between the points where the plane of mean lower low water meets the outermost extension of the headlands. Where there is no pronounced headland, the line shall be drawn to the point where the line of mean lower low water on the shore is intersected by the bisector of the angle formed where a line projecting the general trend of the line of mean lower low water along the open coast meets a line projecting the general trend of the line of mean lower low water along the tributary waterway.

6. Roadsteads, waters between islands, and waters between islands and the mainland are not *per se* inland waters.

7. The inland waters of the Port of San Pedro are those enclosed by the breakwater and by straight lines across openings in the breakwater; but the limits of the

port, east of the eastern end of the breakwater, are not determined by this decree.

8. The inland waters of Crescent City Harbor are those enclosed within the breakwaters and a straight line from the outer end of the west breakwater to the southern extremity of Whaler Island.

9. The inland waters of Monterey Bay are those enclosed by a straight line between Point Pinos and Point Santa Cruz.

10. The description of the inland waters of the Port of San Pedro, Crescent City Harbor, and Monterey Bay, as set forth in paragraphs 7, 8, and 9 hereof, does not imply that the three-mile limit is to be measured from the seaward limits of those inland waters in places where the three-mile limit is placed farther seaward by the application of any other provision of this decree.

11. The following are not historic inland waters, and do not comprise inland waters except to the extent that they may be enclosed by lines as hereinabove described for the enclosure of inland waters other than historic bays:

(a) Waters between the Santa Barbara or Channel Islands, or between those islands and the mainland;

(b) Waters adjacent to the coast between Point Conception and Point Hueneme;

(c) Waters adjacent to the coast between Point Fermin and Point Lasuen (identified as the bluffs at the end of the Las Bolsas Ridge at Huntington Beach);

(d) Waters adjacent to the coast between Point Lasuen and the western headland of Newport Bay;

(e) Santa Monica Bay;

(f) Crescent City Bay;

(g) San Luis Obispo Bay.

12. With the exceptions provided by § 5 of the Submerged Lands Act, 43 U.S.C. § 1313, and subject to the powers reserved to the United States by § 3 (d) and § 6 of said Act, 43 U.S.C. §§ 1311 (d) and 1314, the State of California is entitled, as against the United States, to the title to and ownership of the tidelands along its coast (defined as the shore of the mainland and of islands, between the line of mean high water and the line of mean lower low water) and the submerged lands, minerals, other natural resources and improvements underlying the inland waters and the waters of the Pacific Ocean within three geographical miles seaward from the coast line and bounded on the north and south by the northern and southern boundaries of the State of California, including the right and power to manage, administer, lease, develop and use the said lands and natural resources all in accordance with applicable State law. The United States is not entitled, as against the State of California, to any right, title or interest in or to said lands, improvements and natural resources except as provided by § 5 of the Submerged Lands Act.

13. The parties shall submit to the Court for its approval any stipulation or stipulations that they may enter into, identifying with greater particularity all or any part of the boundary line, as defined by this decree,

between the submerged lands of the United States and the submerged lands of the State of California, or identifying any of the areas reserved to the United States by § 5 of the Submerged Lands Act. As to any portion of such boundary line or of any areas claimed to have been reserved under § 5 of the Submerged Lands Act as to which the parties may be unable to agree, either party may apply to the Court at any time for entry of a further supplemental decree.

14. This decree does not determine the effect, if any, upon the coast line of straits which are merely channels of communication to inland waters and, except as to those water areas specifically designated in paragraph 11 hereof, does not determine the effect, if any, upon the coast line of waters other than bays which may be alleged to constitute historic inland waters. If either of said determinations is required in order to identify any portion of the boundary line between submerged lands of the United States and submerged lands of the State of California, either party may apply to the court at any time for entry of a further supplemental decree.

15. The Court retains jurisdiction to entertain such further proceedings, enter such orders, and issue such writs as may from time to time be deemed necessary or advisable to give proper force and effect to this decree or to effectuate the rights of the parties in the premises.

2. The State suggests a paragraph 14, which the United States would omit, expressly stating that the questions as to the status of straits leading only to inland waters and historic waters other than bays remain unadjudicated. This paragraph would allow either party to petition the Court for a supplemental decree, should determination of these questions ever become necessary. It expressly recognizes the adverse adjudications set forth in paragraph 11 of the decree, and would not allow the State to question the status of water areas already considered by the Court.

These differences arose out of the United States' position that the list of inland waters affecting the coast line set forth in paragraph 4 of the proposed decree was exclusive. The United States rejected California's suggestion that two other principles be incorporated in this listing:

1. That the rules applicable to bays apply also to straits leading only to inland waters.

2. That historic inland waters include not only "bays" in the literal sense, but also any other historic inland water, defined essentially as a water over which the United States has traditionally asserted and maintained dominion with the acquiescence of foreign nations.

The basis for the Government's rejection of this proposed language is their contention that these principles have been abrogated by adoption of the Convention on the Territorial Sea and the Contiguous Zone, T.I.A.S. No. 5639. As California will demonstrate in this memorandum, these two principles were expressly conceded

by the United States throughout the entire course of this litigation. The State also believes that they are clearly implicit both in this Court's opinion of May 17, 1965, and in the Report of the Special Master dated October 14, 1952. In this memorandum, California will argue that the present position of the United States is untenable and that the Convention does not have the effect of abrogating these two previously unchallenged principles. The State's proposed decree does not, however, contain an adjudication to this effect, but rather would hold these matters in abeyance until such time, if ever, as their resolution may become necessary in order to determine any portion of the boundary between State and Federal lands.

Our reasons for suggesting this approach are twofold:

1. We believe that these questions should not be decided in the abstract, but rather in the context of concrete factual situations (if such should ever arise) involving either a strait conforming to the geographical criteria applicable to bays and leading only to inland waters, or an historic water, other than a bay, over which the requisite dominion has been exercised with the acquiescence of foreign nations.

2. We believe it would be inappropriate and undesirable for this Court to adjudicate important and complex questions of this nature in the course of the issuance of a decree, which questions are now being raised for the first time, were not argued in the briefs hitherto presented by either party, and were not squarely considered in the Opinion handed down by the Court.

If this Court should determine that these questions have indeed been decided by its Opinion of May 17, 1965, California respectfully suggests that the decree expressly recognize the continued validity of the hitherto unchallenged principles applicable to straits leading only to inland waters and historic waters other than bays. To cover this contingency, the State will suggest in the Conclusion of this memorandum alternative language to that set forth in its proposed decree.

I

The Government's Contention That Inland Waters Cannot Include Straits Communicating Only to Inland Waters Is Untenable.

A. Said Contention Is Contrary to the Consistent Position of the Government Throughout This Litigation.

As stated in the introduction hereto, the United States now insists that the list of inland waters set forth in paragraph 4 of the proposed decrees of both parties is exhaustive, thus denying that straits leading to inland waters may themselves constitute inland waters. That this contention is entirely inconsistent with the Government's position throughout this litigation is vividly illustrated by its "Brief for the United States in Answer to California's Exception to the Report of the Special Master," filed with this Court in June 1964. At pages 119-21, inclusive, of this Brief, the United States quoted with approval the State Department's letter of November 13, 1951 (set forth in full at pp. 9a-11a of said Brief), including the following language at page 121:

> "'. . . With respect to a strait which is merely a channel of communication to an inland sea, how-

ever, the United States took the position, with which the Second Sub-Committee agreed, that the rules regarding bays should apply (*Acts of Conference,* 201, 220).'

* * * * *

" 'The principles outlined above represent the position of the United States with respect to the criteria properly applicable to the determination of the base line of territorial waters and to the demarcation between territorial waters and inland waters.' "

At pages 130-31 of said Brief, the United States reiterated its position, using the following language:

"(e) *Straits leading to inland waters.*—Wherever the United States has insisted on the right of innocent passage through straits, denying them the status of inland waters, the claim has rested on the character of the strait as a passageway between two areas of high seas. *No such right is claimed as to a strait leading only to inland waters. Such a strait is treated as a bay.* Examples of this have already been discussed, including the straits leading into the Alaskan Archipelago (*supra,* pp. 105-107), straits leading to waters between Cuba and its encircling reefs and keys (*supra,* pp. 103-105), and Chandeleur Sound (*supra,* p. 110; see also, *infra,* pp. 153-155)." (Emphasis added.)

As will be discussed more fully below (Point III), if the present United States' position is adopted, none of the aforementioned maritime areas could be considered to be inland waters.

It is significant that the United States' Brief of June 1964 was filed with this Court some six years after the initial adoption of the Convention on the Territorial Sea and the Contiguous Zone (U.N. Doc. A/Conf. 13/L.52), some three years after its ratification by the United States in 1961 (44 Dept. of State Bulletin 609), and over a year after the Secretary of State had specifically recognized that the principles enunciated in the Convention must be regarded ". . . as the best evidence of international law on the subject at the present time . . ." and as ". . . having the approval of this Government and as expressive of its present policy . . ." (Letter, U.S. Secretary of State to U.S. Attorney General, January 15, 1963, 2 *International Legal Materials* 527, 528 (1963).) Thus, the representations of the Government to this Court as to the United States' policy concerning straits communicating to inland waters cannot be said to have been made without full knowledge of the Convention and the effect of its adoption upon American foreign policy.

B. The Present Contention of the United States Is Inconsistent With Representations Made to Congress by the State Department Prior to Adoption of the Submerged Lands Act of 1953.

Also significant are the representations made by the Department of State to Congress prior to the enactment of the Submerged Lands Act of 1953. The follow are two examples of these representations:

Mr. Jack B. Tate, Deputy Legal Adviser of the Department of State, made the following statement on

March 3, 1953 ("Submerged Lands," Hearings before the Committee on Interior and Insular Affairs, United States Senate, 83d Cong., 1st. Sess., on S.J. Res. 13, etc., 1051-52; XXVIII *Bulletin,* Department of State, No. 718, Mar. 30, 1953, at 486):

> ". . . A strait or channel, or sound which leads to an inland body of water, is dealt with on the same basis as bays. . . ."

The then Assistant Secretary of State, Thruston B. Morton, included the following statement in his report to the Chairman of the same Senate Committee on March 4, 1953 ("Submerged Lands," Hearings, *supra,* at 27, 28):

> ". . . With respect to a strait which is only a channel of communication to an inland body of water, the United States has taken the position that the rules governing bays should apply. . . ."

C. The Special Master Recognized That Rules Applicable to Bays Were Applicable to Straits Leading to Inland Waters.

The United States' position prior to the reactivation of this litigation in March 1963, as understood by the Special Master, is reflected in his Report of October 14, 1952, wherein at page 27, appears the following statement:

> ". . . *If the strait is merely a channel of communication to an inland sea the ten-mile rule regarding bays should apply.* The channels between the offshore islands and the mainland in the so-called 'unit area' claimed by California connect two areas of open sea." (Emphasis added.)

There can be no question but that the Special Master accepted the concession by the United States as to straits leading to inland waters, and that his third and final Report assumed the validity of the doctrine that the rules relating to bays were applicable to such straits.

D. This Court's Opinion of May 17, 1965, Reaffirmed the Principle That Straits Leading to Inland Waters Could Be Internal in Character.

The present contention of the United States is also inconsistent with this Court's Opinion of May 17, 1965. (*United States v. California,* 381 U.S. 139.) At page 171 of that Opinion, this Court recognized that the "United States claims as inland waters" Breton and Chandeleur Sounds off Louisiana, citing *United States v. Louisiana,* 363 U.S. 1, 66-67, n. 108 (1960). The Court distinguished these Sounds, as well as the Strait of Juan de Fuca, from California's Santa Barbara Channel on the basis of a finding that the latter serves as a useful route of communication between two areas of open sea, while the former three straits lead only to inland waters. (381 U.S. at 170-71.) It is submitted that this portion of the Court's opinion constitutes a strong reaffirmation of the previously unchallenged principle applicable to straits leading to inland waters, and recognizes the continued validity of this principle despite the final adoption of the Convention. The Opinion certainly affords no basis for the United States' contention that this principle was abrogated by the Convention.

II

The Government's Present Contention That Historic Inland Waters Are Limited to Bays Is Likewise Untenable.

A. The United States Has Never Before Argued to This Court That the Doctrine of Historic Inland Waters Was Limited to Bays.

The United States' position up to the present time with respect to historic inland waters is illustrated by the following excerpt from page 141 of its Brief of June 1964:

> "f. *Waters over which the national government has historically exercised jurisdiction as inland waters are not subject to the foregoing geographical principles*
>
> "The State Department letter of November 13, 1951, said (Appendix 'A', *infra,* p. 11a).
>
> "'. . . In connection with the principles applicable to bays *and straits,* it should be noted that they have no application with respect to the waters of bays, *straits, or sounds,* when a state can prove by historical usage that such waters have been traditionally subjected to its exclusive authority. The United States specifically reserved this type of case at the Hague Conference of 1930 (*Acts of Conference,* 197).'
>
> "It has been widely recognized that general geographical criteria are not applicable to waters over which a nation has established its jurisdiction by historic usage. *Cf. Convention on the Territorial Sea and the Contiguous Zone, Article 7, Para-*

graph 6, 106 Cong. Rec. 11174. California agrees (Brief, 103-104); consequently there is no need to elaborate the point. Our differences concern the question of what waters are to be considered 'historic waters' within this principle, . . ." (Emphasis added.)

This quotation is significant not only for its reiteration of the principle that historic inland waters are not limited to bays and may also include other maritime areas such as straits or sounds, but also for its citation of the Convention as supporting this general principle. As will be shown below, this citation is fully supported by the interpretation of the Convention given by the United Nations itself.

B. The Present United States' Contention Contradicts Representations Made to Congress by the Department of State at the Time the Submerged Lands Act Was Under Consideration.

The following excerpt from the report of Thruston B. Morton, as Assistant Secretary of State, to the Senate Committee considering the Submerged Lands Act (Hearings, *supra* at 28) also illustrates the radical nature of the change of position presently proposed by the Government:

". . . With respect to *both bays and straits,* of course, the United States has excepted the cases where, by historical usage, such waters are shown to have been traditionally subjected to the exclusive authority of the coastal state." (Emphasis added.)

C. The General Applicability of the Doctrine of Historic Inland Waters Was Recognized by the Special Master.

It is also clear that the Special Master regarded the doctrine of historic inland waters as being applicable to maritime areas other than bays. The relevant portion of the Report of October 14, 1952 is at pages 30-39, and is entitled *Historical Waters.* The Special Master's discussion encompassed the question as to the historical character of the "unit area" as well as that of five designated bays, and the principles he enunciated were considered equally applicable to all water areas under consideration. This is illustrated by the concluding paragraph of his discussion which reads as follows (*Id.* at 39):

> "Much of the testimony submitted to the Special Master in these proceedings dealt with the geography, the history and the economic importance of the water area in dispute; Monterey Bay, Crescent City Bay area, San Luis Obispo Bay, Santa Monica Bay and San Pedro Bay, and the so-called 'over-all unit area' between the offshore islands and the mainland (Cal. 79-117; U.S. 148-151; U.S.R. 50-78). *If there had been any assertion of exclusive jurisdiction of these waters by or on behalf of the United States, then this testimony would in general be relevant to the question whether these areas present special characteristics such as would justify in international law an assertion of exclusive sovereignty.* But if my factual conclusions are correct, then the testimony is irrelevant to any issue here presented. . . ." (Emphasis added.)

D. The United Nations Itself Has Reaffirmed the Continued Validity of Former Principles Applicable to Historic Inland Waters Despite Adoption of the Convention.

The United States' position that historic inland waters are limited to bays is predicated upon its narrow and literal interpretation of the Convention on the Territorial Sea and the Contiguous Zone. This narrow interpretation is refuted by two United Nations documents noted in this Court's Opinion (381 U.S. at 172, n. 43, and at 173, n. 46), *i.e.*, United Nations Documents A/CN. 13/1 (1957) and A/CN. 4/143 (1962).

United Nations Document A/CN. 13/1, entitled "Historic Bays," is a memorandum drafted by the Secretariat of the United Nations in preparation for the United Nations Conference on the Law of the Sea, which Conference subsequently adopted the Convention. The basis for said memorandum was draft Article 7, paragraph 4, which was substantially identical to Article 7, paragraph 6, as ultimately adopted. (*Id.*, at 1-2, Para. 2.) Paragraph 8 of said memorandum clearly recognized that the doctrine of historic waters included waters other than bays, using the following language (*Id.*, at 2, Para. 8):

> "B. *'Historic bays' and 'historic waters'*
>
> "8. As indicated in part II of this paper, the theory of historic bays is of general scope. Historic rights are claimed not only in respect of bays, but also in respect of maritime areas which do not constitute bays, such as the waters of archipelagos and the water area lying between an archipelago and the neighbouring mainland: historic rights are also claimed in respect of straits, estuar-

ies and other similar bodies of water. There is a growing tendency to describe these areas as 'historic waters', not as 'historic bays'. . . ."

Even more significant is the fact that on December 10, 1958, over seven months *after* the adoption of the Convention, the General Assembly approved a draft resolution on the "Question of initiating a study of the juridical regime of *historic waters,* including historic bays." (Emphasis added.) (Official Records of the General Assembly, Thirteenth Session, Sixth Committee, 597th and 598th meetings and Annexes to Agenda Item 58.) This study (A/CN. 4/143) was completed by the United Nations Secretariat on March 9, 1962, and its express purpose was to clarify the meaning and effect of Article 7, paragraph 6 of the Convention. The following excerpts from paragraph 34, pages 16-17, of said study completely refute the contention by the United States that the Convention limited the concept of historic waters to historic bays:

"[*I*]*t can be said that all those authorities who have directed their attention to the problem seem to agree that historic title can apply also to waters other than bays, i.e., to straits, archipelagoes and generally to all those waters which can be included in the maritime domain of a State.* . . . In principle, as was said in the Secretariat memorandum (A/CONF. 13/1), referred to above in paragraph 29, 'the theory of historic bays is of general scope', i.e., it applies also to other maritime areas than bays. Sir Gerald Fitzmaurice no doubt expressed a generally held opinion when he stated that:

there seems to be no ground of principle for restricting the concept of historic waters merely to the waters of a bay. Even if the claim would in practice be fewer, a claim could equally be made on an historic basis to other waters.

It will be seen below that the legal status of historic bays may be different from that of other historic waters, *but that circumstance does materially not weaken the position that an historic title can exist to other waters than bays.*" (Emphasis added. Footnotes omitted.)

5. This Court's Opinion of May 17, 1965, Does Not Support the Pseudo Contention of the United States With Regard to Historic Inland Waters.

This Court's discussion of the present question (381 U.S. at 172-73) is entitled "Historic Inland Waters." The decision expressly recognizes that California claimed waters other than bays as historic inland waters. (*Id.* at 172.) It rejected California's claims, not on the ground that the Convention limits the doctrine of historic inland waters to historic bays, but rather because it found that there had been insufficient assertion and maintenance of dominion over the waters in question. It is submitted that if any inference may be drawn from the Court's Opinion concerning the question newly raised by the United States, it is that, given the requisite assertion and maintenance of jurisdiction by the coastal nation and acquiescence by foreign nations, historic inland waters may include maritime areas other than bays, such as straits and sounds.

III

Adoption of the Present Position of the Government With Regard to Straits Leading to Inland Waters and Historic Waters Other Than Bays Would Radically Affect the Status of Many Maritime Areas Universally Regarded as Inland Waters and Would Violate the Intention of Congress in Approving the Convention.

As we have pointed out above, this Court has specifically pointed out that Breton and Chandeleur Sounds and the Strait of Juan de Fuca are inland waters, recognized as such by the United States. (381 U.S. at 171.) If, however, the United States succeeds in establishing that the Convention has abrogated pre-existing rules applicable to straits leading to inland waters and historic waters other than bays, the above designated areas would cease to be inland waters. Other water areas which would be affected include the straits leading into the Alaskan Archipelago (conceded to be inland waters in the United States Brief of June 1964, pp. 105-107, 131), and Long Island Sound, which is a strait leading to the East River, an arm of the Atlantic Ocean.

Thus, both as to straits leading to inland waters and historic waters other than bays, the present position of the United States would have the effect of changing the status of waters which were internal before adoption of the Convention. That this was not the intention of the Senate in ratifying the Convention is clearly indicated by the "Answers to Questions of Senate Foreign Relations Committee Concerning the Law of the Sea Conventions," prepared by the Department of State on March 2, 1960, prior to Senate approval of the Con-

vention. (Hearings, S. Foreign Relations Committee, Convention on the Law of the Sea, Executives J, K, L, M, N, 86th Congr., 2d Sess., 82-111, inclusive.) A portion of question No. 6 prepared by the Committee Staff was:

> "Are there any examples of waters which are now internal waters, but which would become territorial waters or high seas under the rules prescribed by the Convention on the Territorial Sea and the Contiguous Zone?"

The written answer to this portion of question No. 6, prepared by the Department of State, was as follows:

> "Application of the rules of the Convention on the Territorial Sea and the Contiguous Zone concerning straight baselines would not have the effect of changing the status of waters which are now internal." (*Id.* at 84.)

Although the State Department's answer was limited to the effect of the straight baseline rule, the question was not so limited and the clear inference from the State Department's reply was that the Convention would not have the effect of converting waters formerly regarded as internal waters of the United States into either territorial sea or high seas.

Conclusion.

It is submitted that the questions as to the status of straits leading to inland waters and historic waters other than bays should be left in abeyance as being unadjudicated at the present time. We believe that the de-

cree proposed by California effectively accomplishes this purpose. If, however, the Court should determine that these questions have in fact been adjudicated, we would suggest the following modifications in the form of decree proposed by the State:

1. Revise paragraph 4(c) so as to read as follows (the italicized language being added):

"(c) Any 'historic bay,' as that term is used in paragraph 6 of Article 7 of the Convention, *and any other 'historic inland water,' said terms being* defined essentially as a bay *or other water area* over which the United States has traditionally asserted and maintained dominion with the acquiescence of foreign nations;"

2. Revise the last sentence of paragraph 4(d) (presently reading "An estuary of a river is treated in the same way as a bay.") to read as follows:

". . . The rules applicable to bays apply also to estuaries of rivers and to straits leading only to inland waters."

3. Strike paragraph 14 as presently proposed by California.

For the reasons stated in this memorandum, we urge this Court to reject the form of decree proposed by the United States insofar as it is inconsistent with that proposed by California. Said decree would abrogate the formerly accepted rules relating to straits leading to inland waters and historic waters other than bays. It would be contrary to the Opinion of this Court, the

intention of Congress, and the true meaning and effect of the Convention on the Territorial Sea and the Contiguous Zone.

Respectfully submitted,

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